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No. _____

In The
Supreme Court of the United States

UMCO ENERGY, INC.,
Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION,
Respondent.

On Petition for Writ of Certiorari to the Commonwealth Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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September 29, 2008

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QUESTION PRESENTED FOR REVIEW

This is an important case dealing with a government agency's arbitrary classifications of energy versus non-energy production companies by interpreting the Pennsylvania Clean Streams Law to deny only permits of energy production companies because of anticipated "pollution" to waters of the Commonwealth of Pennsylvania even though both classes of entities anticipate causing similar pollution to such waters in their permit applications. In this case, the Commonwealth of Pennsylvania Department of Environmental Protection ("Department") disparately applied the Pennsylvania Clean Streams Law ("Clean Streams Law"), 35 P.S. § 691.1 et seq., by selectively stepping outside the scope and directives of facially-neutral legislative guidelines in the Clean Streams Law and making arbitrary classifications as to who was entitled to permits under the Clean Streams Law as well as making improper assumptions of an energy production company's future compliance with such legislative guidelines based on the Department's prejudice towards the energy production company, UMCO Energy, Inc. ("UMCO"), and based on UMCO's past activities. The Department impermissibly relied on its prejudices and UMCO's past activities to deny its permit application. In contrast, the Department does not base permitting decisions of similarly-situated non-energy production companies on subjective prejudices or past impacts in enforcing the Clean Streams Law.

1. Is there an equal protection violation when a government agency exhibits personal animus against energy production companies and creates arbitrary

classifications to enforce a facially-neutral statute by denying permits of only energy production companies because of anticipated "pollution" to waters of a state by such energy production companies, even though both classes of similarly-situated entities anticipate causing similar pollution to such waters in their permit applications. Yes.

PARTIES TO PROCEEDING AND DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Parties to Proceeding:

1. UMCO Energy, Inc., *Petitioner*
2. Commonwealth of Pennsylvania, Department of Environmental Protection, *Respondent*
3. Citizens for Pennsylvania's Future, *Intervenor*

Disclosure of Corporate Affiliations and Financial Interest:

Pursuant to U.S. Supreme Court Rules 14.1 and 29.6, Petitioner UMCO Energy, Inc. makes the following disclosures:

UMCO Energy, Inc. is a wholly-owned subsidiary of Maple Creek Mining, Inc., which is a privately held Pennsylvania corporation. Murray Energy Corporation, a privately held Ohio corporation, is the ultimate parent company of Maple Creek Mining, Inc.

There is no publicly held company that owns 10% or more of UMCO Energy, Inc.'s stock.

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

PARTIES TO PROCEEDING AND DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST iii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES vii

INTRODUCTORY PRAYER 1

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISION INVOLVED .. 2

PERTINENT STATUTES AND REGULATIONS . 3

STATEMENT 4

REASONS FOR GRANTING PETITION 7

1. The Commonwealth Court decided an important question of federal law that conflicts with relevant decisions of this Court that prohibit arbitrary classifications in the enforcement of a statute. 8

2. The Department was persuaded by its own prejudices against the energy production company's owner in disparately enforcing the Clean Streams Law. 14

3. The Department has intentionally and disparately stepped outside the directives of the Clean Streams Law and selectively applied the law by focusing on an energy production company's past impacts on waters of the Commonwealth, while not considering similarly-situated non-energy companies' past impacts. 16

4. The Commonwealth Court's decision will have a devastating impact on the issuance of permits for land use and energy exploration and production. 18

5. The Commonwealth Court's erroneous affirmation of the Department's Order opens the door for government agencies to selectively and illegally violate important real property rights in the issuance of permits for land use and energy exploration. 20

CONCLUSION 21

APPENDIX

Appendix A: Opinion, Commonwealth Court of Pennsylvania, dated December 12, 2007 . . . . 1a

Appendix B: Amended Adjudication, Commonwealth of Pennsylvania Environmental Hearing Board, dated March 19, 2007 ..... 27a

Appendix C: Adjudication, Commonwealth of Pennsylvania Environmental Hearing Board, dated September 5, 2006 ..... 46a

Appendix D: Order, Supreme Court of Pennsylvania, dated July 1, 2008 ..... 179a

TABLE OF AUTHORITIES

Page

CASES

Burt v. City of New York,
156 F.2d 791 (2d Cir. 1946) 11

Community College of Delaware County v. Fox,
20 Pa. Cmwlth. 335 (Pa. Commw. Ct. 1975) . 17

Consol Pennsylvania Coal Co. v. DEP ("*Consol I*"),
2002 EHB 1038 (Pa. Envtl. 2002) 12

Cox v. Louisiana, 379 U.S. 536 (1965) 9

McFarland v. American Sugar Refining Co.,
241 U.S. 79 (1916) 9

Oley Township v. Dep't of Envtl. Prot.,
1996 EHB 1098 (Pa. Envtl. 1996) 13

UMCO Energy, Inc. v. Dep't of Envtl. Prot.,
938 A.2d 530 (Pa. Commw. Ct. 2007) . . . 1, 2, 16

UMCO Energy, Inc. v. Dep't of Envtl. Prot.,
951 A.2d 1168 (Pa. 2008) 1, 2

Village of Willowbrook v. Olech,
528 U.S. 562 (2000) 8, 14, 15

Yick Wo v. Hopkins, 118 U.S. 356 (1886) . . . . *passim*

CONSTITUTION

U.S. Const. amend. 14, § 1 ..... 2, 3

STATUTES

28 U.S.C. § 1257 2

32 P.S. §§ 693.1 to 693.27 3

35 P.S. § 691.1 ..... i, 12

35 P.S. § 691.4 ..... 13, 16

35 P.S. § 691.4(3)-(4) 16

35 P.S. § 691.5 17

52 P.S. § 1406.1 ..... 3, 4, 6

RULES

Sup. Ct. R. 13.1 2

Sup. Ct. R. 13.3 2

Sup. Ct. R. 14.1 iii

Sup. Ct. R. 29.6 iii

REGULATIONS

25 Pa. Code §§ 89.141 to 89.155 ..... 3, 4

25 Pa. Code §§ 105.1 to 105.452 3

INTRODUCTORY PRAYER

The Petitioner respectfully requests that a writ of certiorari be granted to review the judgment and Opinion of the Commonwealth Court of Pennsylvania dated and filed December 12, 2007.

OPINIONS BELOW

The Adjudication and Amended Adjudication of the Commonwealth of Pennsylvania Environmental Hearing Board (the "Board") dated September 5, 2006 and March 19, 2007, respectively, and Final Order dated March 19, 2007 have been included in the Appendix on pages 27a-178a. The Opinion of the Commonwealth Court of Pennsylvania, dated and filed December 12, 2007, is reported at 938 A.2d 530 (Pa. Commw. Ct. 2007) and has been included in the Appendix on pages 1a-26a. The Opinion of the Supreme Court of Pennsylvania, Western District, dated July 1, 2008 and denying discretionary review, is reported at 951 A.2d 1168 (Pa. 2008) and has been included in the Appendix on pages 179a-180a.

JURISDICTION

UMCO timely appealed the Department's Order to the Board. The Board held a hearing relative to evidence regarding UMCO's equal protection claim under the United States and Pennsylvania Constitutions based on the Department's disparate treatment of subsurface energy production companies vis-à-vis similarly-situated surface non-energy production companies. Relative to these constitutional claims, the Board held in an Amended Adjudication

and Final Order dated March 19, 2007 that UMCO had not been denied equal protection under the law. Amended Adjudication, Conclusions of Law ¶ 20, Appendix at 43a. UMCO timely appealed the decision of the Board and preserved for appeal its constitutional claims for review by the Pennsylvania Commonwealth Court. The Opinion of the Pennsylvania Commonwealth Court was entered on December 12, 2007, which acted on the merits of UMCO's constitutional claims and affirmed the Board's Order that UMCO was not denied equal protection under the law. *UMCO Energy, Inc. v. Dep't of Envtl. Prot.*, 938 A.2d 530, 541 (Pa. Commw. Ct. 2007), Appendix at 24a.

A timely Petition for Allowance to the Supreme Court of Pennsylvania, in which UMCO preserved for appeal its constitutional claims, was denied, without a ruling on the merits, on July 1, 2008. *UMCO Energy, Inc. v. Dep't of Envtl. Prot.*, 951 A.2d 1168 (Pa. 2008), Appendix at 179a-180a. This Petition is timely filed according to Supreme Court Rules 13.1 and 13.3. The Court derives jurisdiction from 28 U.S.C. § 1257. As such, UMCO's constitutional question has been timely and properly raised, and this Court has jurisdiction to review the judgment on a writ of certiorari.

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. amend. 14, § 1:

> SECTION 1.
>
> All persons born or naturalized in the United States, and subject to the jurisdiction thereof,

> are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

PERTINENT STATUTES AND REGULATIONS

The Fourteenth Amendment to the United States Constitution prohibits a governmental agency from denying the equal protection of the laws. U.S. Const. amend. 14, § 1.

The Department has authority to issue permits to mine coal to a subsurface energy production company, such as UMCO, pursuant to the Bituminous Mine Subsidence and Land Conservation Act, 52 P.S. § 1406.1 *et seq*. ("Mine Subsidence Act"), the Clean Streams Law, and 25 Pa. Code §§ 89.141 to 89.155. The Department also has authority to issue permits to similarly-situated surface, non-energy production companies, such as commercial shopping developers, who develop shopping malls and, in doing so, propose to completely eliminate or relocate waters of the Commonwealth pursuant to the Clean Streams Law and Dam Safety and Encroachment Act, 32 P.S. §§ 693.1 to 693.27, and 25 Pa. Code §§ 105.1 to 105.452 (commonly referred to as the "Chapter 105 Program").

Permit applicants under both the Mine Subsidence Act and the Chapter 105 Program are required to conduct an environmental assessment showing, among

other things, what type of water is being impacted (e.g., stream or wetland), the functions and values of those waters, and the proposed impacts on such functions and values for the Department's analysis under the Clean Streams Law. Applicants for both permits also submit mitigation measures that each applicant plans to take to minimize pollution to the waters, including minimizing adverse impacts.

In analyzing permit applications, and revisions thereto, for both subsurface energy production companies (under the mine subsidence regulations) and similarly-situated surface non-energy production companies (under the Chapter 105 Program), the Department relies upon the Clean Streams Law to deny either type of permit application based on potential pollution to the waters of the Commonwealth.

STATEMENT

Introduction

The Department uses the Clean Streams Law to deny permits to energy production companies based on assumed pollution to waters of the Commonwealth, but has systematically refused to apply the Clean Streams Law to deny permit applications of another class, non-energy production companies, even though these non-energy production companies engage in industrial activities that anticipate, and indeed create, similar pollution to the waters of the Commonwealth.

Furthermore, the facially-neutral Clean Streams Law does not require the Department to consider an

entity's past impacts and dealings in evaluating permit applications for industrial activities (e.g., commercial activities) that may impact waters of the Commonwealth. Instead, the Clean Streams Law focuses only on the present and future impacts and uses of the waters of the Commonwealth.

Nonetheless, for subsurface energy production companies whose industrial activities may impact waters of the Commonwealth in exploring for and capturing valuable mineral resources, the Department has intentionally and disparately focused on past conduct, impacts, and prejudices to deny permit applications. The Department has used UMCO's past mining related impacts to streams of the Commonwealth and its past dealings and prejudices against UMCO's ultimate owner and director, Mr. Robert E. Murray, to form improper assumptions of future conduct and future impacts to the waters of the Commonwealth and deny its permit application and its fundamental real property right to explore and produce energy from natural resources.

In contrast, the Department does not look at past conduct of other similarly-situated, non-energy production companies, such as surface commercial developers and highway builders, in enforcing the Clean Streams Law.

The Department's unreasonable but methodical and systematic classification and refusal to treat subsurface energy production companies, including UMCO in this matter, the same as other similarly-situated non-energy production companies, and its decision to intentionally make assumptions based on

prejudices and past conduct of energy production companies only, violates UMCO's equal protection rights under Fourteenth Amendment to the U.S. Constitution.

The Parties

UMCO operates the High Quality Mine (the "Mine"), a full extraction ("longwall") underground bituminous coal mine in Washington County, Pennsylvania pursuant to a permit issued by the Department. The Department is the executive agency that administers and enforces the Mine Subsidence Act, as well as the Clean Streams Law, and the rules and regulations promulgated under those laws. Citizens for Pennsylvania's Future ("PennFuture") is an environmental group that was granted intervenor status by the Board.

Department's Order

On November 12, 2004, the Department issued an Order (the "Department's Order") to UMCO which, among other things, unilaterally amended its permit to prohibit UMCO from using the longwall mining method to remove its coal from the 6 East Panel ("6E Panel") of the Mine. The Department's decision was based on the authority of the Clean Streams Law, which it broadly interpreted to conclude that UMCO was unable to show no presumptive evidence of "pollution" of waters of the Commonwealth resulting from UMCO's proposed longwall mining activity.

REASONS FOR GRANTING PETITION

This petition should be granted for the following reasons: (1) the Commonwealth's decision in this matter is a departure from long-standing U.S. Supreme Court authority by creating arbitrary classifications as to who is entitled to permits under the Clean Streams Law; (2) the Department impermissibly relied upon its own prejudices against UMCO and its ultimate owner, Mr. Robert E. Murray, in enforcing the Clean Streams Law; (3) the Department has intentionally and disparately stepped outside the directives of the Clean Streams Law and disparately applied the law by making conclusive assumptions based on an energy production company's past impacts on waters of the Commonwealth, while not making the same conclusive assumptions based on similarly-situated non-energy companies' past impacts; (4) the Commonwealth Court's decision will have a devastating impact on the issuance of permits for land use and energy exploration and production; and (5) the Commonwealth Court's erroneous affirmation of the Department's Order opens the door for government agencies to selectively and discriminatorily violate important real property rights in issuing permits for land use and energy exploration and production.

1. The Commonwealth Court decided an important question of federal law that conflicts with relevant decisions of this Court that prohibit arbitrary classifications in the enforcement of a statute.

The Department's equal protection violation is an impermissible departure from long-standing U.S. Supreme Court authority, including *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) *and Village of Willowbrook v. Olech*, 528 U.S. 562 (2000). These cases hold that a government entity is prevented from arbitrarily classifying individuals or entities and interpreting a statute favorably to one class while applying a different and unfavorable interpretation to another class. *Yick Wo*, at 373-74 *and Village of Willowbrook*, at 564-65. In this case, the Department interpreted the Clean Streams Law favorably to one class, non-energy production companies, while applying a different and unfavorable interpretation to another similarly-situated class, energy production companies, such as UMCO.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits selective enforcement based upon an unjustifiable standard such as race, religion, or other arbitrary classification, or to prevent the exercise of a fundamental right. *See, id.* at 369. As the U.S. Supreme Court has held, a public official may not engage in invidious discrimination "among persons or groups either by use of a statute providing a system of broad discretionary licensing power or, . . . the equivalent of such a system by selective enforcement

of an extremely broad prohibitory statute." *Cox v. Louisiana*, 379 U.S. 536, 557-58 (1965). Intentional or purposeful discrimination may be shown by extrinsic evidence demonstrating a discriminatory design to favor one individual or class over another. *See, McFarland v. American Sugar Refining Co.*, 241 U.S. 79, 86-97 (1916) *and Yick Wo*, 118 U.S. at 374.

In this case, both subsurface energy production companies and surface non-energy production companies are similarly-situated and deserve equal protection under the Clean Streams Law.

In particular, the permits for UMCO and similarly-situated surface non-energy production companies are subject to the Department's enforcement of the Clean Streams Law as follows:

- Both perform construction and excavation;
- Both apply for a permit to conduct industrial and commercial activity;
- Both own and are trying to develop their real property interests;
- Both engage in commercial development of such real property interests;
- Both may impact waters of the Commonwealth, including stream flow, fish, aquatic life, hydrology, and chemical and physical properties of such waters;

- Both are required to state in their respective permit applications how their industrial activity may impact waters of the Commonwealth;

- Both must develop mitigation plans on how to reduce or remedy the impact to the waters of the Commonwealth;

- Both may be required to submit hydrology studies on the impact of the waters of the Commonwealth;

- There is no requirement that either party must disclose past impacts on waters or past dealings with the Department;

- The Clean Streams Law does not require the Department to consider past impacts, dealings, and prejudices when enforcing the Clean Streams Law under both types of permits; and

- The Department can deny permits for both energy and non-energy production permits under the Clean Streams Law.

Moreover, the Department intentionally and purposefully discriminates against energy production companies, including UMCO.

In *Yick Wo*, the U.S. Supreme Court held that the systematic discretionary and arbitrary classification of a group of Chinese permit applicants vis-à-vis another group of non-Chinese permit applicants in the

enforcement of an ordinance was enough to show that the ordinance was enforced or administered intentionally "with an evil eye and an unequal hand." *Id.*,118 U.S. 356, 373-74; *see also, Burt v. City of New York*, 156 F.2d 791, 791-92 (2d Cir. 1946) (holding that government officials had used their mandatory enforcement powers selectively in denying the application of one architect while "unconditionally approving the applications of other architects, similarly-situated").

In this case, as in *Yick Wo*, the Department used its enforcement powers to selectively deny UMCO's permit based on impermissible factors not even contemplated under the Clean Streams Law and not even considered by the Department in reviewing permit applications of non-energy production companies. The factors include the Department's prejudice towards UMCO, an energy production company, and its decision to focus on past impacts that the energy production company had on other waters of the Commonwealth.

The Department's disparate classifications favoring surface non-energy production companies over subsurface energy production companies was in the unequal application of the Clean Streams Law to prevent "pollution" to waters of the Commonwealth. In particular, during the permitting process, both subsurface energy production companies and surface non-energy production companies anticipated their activities would cause similar "pollution" to the waters of the Commonwealth, as it is defined under the Clean Streams Law.

"Pollution" is defined broadly by the Pennsylvania General Assembly in the Clean Streams Law and means:

> [C]ontamination of any "waters of the Commonwealth" such as will create or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, . . . or to livestock, wild animals, birds, fish or other aquatic life, including, but not limited to, such contamination by alteration of the physical, chemical or biological properties of such waters . . ..

35 P.S. § 691.1 (emphasis added).

Both subsurface energy production companies, such as UMCO, and similarly-situated surface non-energy production companies anticipated that their respective industrial activities would cause "pollution" to the waters of the Commonwealth. Indeed, the Board and Commonwealth Court recognized that the surface non-energy production companies' activities in creating manmade culverts, re-routing streams, and filling-in stream segments and wetlands with concrete would injure, harm, and even eliminate fish and aquatic life (such as macroinvertebrate) and alter the physical and biological properties of these waters.

Further, the Board in this case cited prior decisions holding that even a mere "change in water level in wetlands that could compromise their ecological functions would constitute a violation of the Clean Streams Law." *See Consol Pennsylvania Coal Co. v.*

DEP ("*Consol I*"), 2002 EHB 1038 (Pa. Envtl. 2002) and *Oley Township v. Dep't of Envtl. Prot.*, 1996 EHB 1098, 1117-18 (Pa. Envtl. 1996).

Despite the fact that both classes of entities anticipated causing similar pollution, the Department used the Clean Streams Law as the mechanism to prevent such "pollution" by UMCO, an energy production company, while refusing to employ the same law to prevent non-energy production companies from also "polluting" such waters.

The Department intentionally created such classifications in the enforcement of the Clean Streams Law under the rationale that subsurface energy production companies and surface non-energy production companies apply for different types of permits, which are based on an entities' respective industrial activity (e.g., mining for coal versus constructing commercial shopping centers or constructing roadways). The Clean Streams Law and the Department's interpretation of such law, however, preclude such classifications, as the Clean Streams Law applies to all waters of the Commonwealth regardless of the type of industrial activity that may impact such waters. *See*, Department's Post-Hearing Brief at 10 (citing Section 4 of the Clean Streams Law, 35 P.S. § 691.4).

Such arbitrary classifications in the enforcement of the Clean Streams Law are not reasonable and have no fair or substantial relation to the object of the Clean Streams Law legislation—i.e., current and future protection of waters from pollution. Indeed, there is no reasonable explanation why the Department relies on

its prejudices and past impacts of only UMCO as an energy production company, and not surface non-energy production companies seeking permits. Further, there is no reasonable explanation why the Department would allow these surface non-energy production companies to "pollute" waters of the Commonwealth, yet not allow subsurface energy production companies, such as UMCO, to conduct activities also creating similar "pollution."

The Department's methodical and systematic refusal to treat subsurface energy production companies, including UMCO in this matter, the same as other similarly-situated non-energy production companies, in addition to its selective focus on UMCO's past actions and personal prejudices against UMCO, violates UMCO's equal protection rights under the Fourteenth Amendment to the United States Constitution as explained in the controlling U.S. Supreme Court authority of *Yick Wo and Village of Willowbrook*.

2. The Department was persuaded by its own prejudices against the energy production company's owner in disparately enforcing the Clean Streams Law.

During the time period that the Department was considering UMCO's permit application, Kathleen McGinty, the then Secretary of the Department, sent an email to several Department employees responsible for evaluating UMCO's permit application and stated: "we will never win over a bob murray. but i will be satisfied if we keep reasonable, honest people on our

side." Supersedeas Exhibit GG, admitted into evidence 11/23/04.

It is clear from this email that the Department harbored bias and prejudices toward UMCO and Mr. Robert E. Murray as it proceeded forward in considering UMCO's permit application. Such evidence of prejudice and ill-will of a government agency enforcing a statute or regulation establishes an equal protection claim. *See Village of Willowbrook v. Olech*, at 564-65.

In *Village of Willowbrook*, the Village demanded that in order to connect the Plaintiff to the municipal water supply, the Plaintiff, an individual homeowner, had to obtain an easement more than twice as long as required by other similarly-situated property owners. The Plaintiff alleged evidence of ill-will on behalf of the Village for her prior dealings with the Village, including a successful lawsuit against the Village. The U.S. Supreme Court held that a local permitting agency's failure to grant a permit to connect the water supply and allegations of ill-will based on past conduct and dealings were sufficient to support a claim under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. *See, id.*

In this matter, as in *Village of Willowbrook*, Ms. McGinty's statements show that the Department was proceeding forward on its decision to deny UMCO's permit based on its prejudices and ill-will towards UMCO's ultimate owner and director, Mr. Murray, and establish an equal protection violation.

3. The Department has intentionally and disparately stepped outside the directives of the Clean Streams Law and selectively applied the law by focusing on an energy production company's past impacts on waters of the Commonwealth, while not considering similarly-situated non-energy companies' past impacts.

According to the Commonwealth Court, the Clean Streams Law applies to both non-energy production companies as well as subsurface energy production companies, such as UMCO. *UMCO Energy*, 938 A.2d at 539, Appendix at 22a. Indeed, as to protection of the waters of the Commonwealth, the Clean Streams Law is neutral on its face and does not treat energy and non-energy production companies differently. The Clean Streams Law also applies to "all" waters of the Commonwealth regardless of any distinction based upon the type of industrial or commercial activity (energy production versus commercial shopping malls or highway development) that threatens any such water.[1]

The legislative intent of the Clean Streams Law is to prevent "pollution" to waters of the Commonwealth of Pennsylvania. *See*, 35 P.S. § 691.4(3)-(4). In considering whether an entity may "pollute" the waters of the Commonwealth, the Clean Streams Law does not direct the Department to consider past impacts on such waters. In fact, the Clean Streams

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[1] Department's Post-Hearing Brief at 10 (*citing* Section 4 of the Clean Streams Law, 35 P.S. § 691.4 (emphasis added).

Law focuses only on the protection of present and future impacts to and uses of such waters. *See*, 35 P.S. § 691.5.

Despite the directives of the Clean Streams Law to protect the present and future impacts, the Department spent considerable time focusing on UMCO's past mining activities in the previous 4E and 5E panels and its past impact on the waters of the Commonwealth in those panels to create conclusive assumptions as to what impacts UMCO's industrial activity would have on the 6E Panel at issue under UMCO's permit application. Such considerations of past conduct fall outside the interpretation afforded to the Department under the Clean Streams Law: "It must be remembered, however, that the power of an administrative agency must be sculptured precisely so that its operation figure strictly resembles its legislative model." *Community College of Delaware County v. Fox*, 20 Pa. Cmwlth. 335, 351 (Pa. Commw. Ct. 1975) (requiring the Department of Environmental Resources to operate within the limitations of the Clean Streams Law).

The Department does not make these same, arbitrary and conclusive assumptions or consider past conduct of other non-energy production companies, such as commercial shopping mall and highway developers, when applying the Clean Streams Law to their permit applications even though there exists similar anticipated impacts to the waters of the Commonwealth, including pollution. These similarly-situated non-energy production companies include Pittsburgh Mills Shopping Complex ("Pittsburgh

Mills"), Deer Park Shopping Mall Development ("Deer Park"), housing developers, and highway developers.

If the Commonwealth Court's decision stands, the Department's disparate enforcement of a statute through conclusive reliance on factors that are not even contemplated under the statute and not utilized when analyzing permit applications of other similarly-situated entities, would leave the door open for any government agency simply to pick and choose past conduct of any entity that it disfavors and create conclusive assumptions to justify its discriminatory motive against that entity.

4. The Commonwealth Court's decision will have a devastating impact on the issuance of permits for land use and energy exploration and production.

The Commonwealth Court's decision can have detrimental, far-reaching impacts on the extraction of the Commonwealth's important subsurface energy source—coal. The importance of this case also stretches beyond energy production companies in the Commonwealth. This case involves not only the fundamental right to enjoy one's real property interests, which is one of the most revered rights in our laws and traditions, but also to enjoy such rights free of a government agency's biased and subjective opinions while enforcing statutes and regulations related to the issuance of permits for land use and energy exploration and production.

If the Commonwealth Court's decision upholding the Department's unprecedented and arbitrary

application of the Clean Streams Law continues, it will strip an energy production company of its fundamental right to mine and produce energy and empower the Department with rights beyond what the Pennsylvania legislature intended in the Clean Streams Law, which does not permit prejudice and disparate treatment of different applicants for permits issued under it.

This is alarming considering our country's reliance on foreign energy consumption and the recent push to discover new energy resources in our country, including off-shore drilling and exploration for energy resources. There is no doubt that this exploration and production of energy will continue to impact waters in the Commonwealth and across the country. Thus, it is important that an entity's past dealings with government agencies should not be a basis to preclude further exploration of such valuable resources, especially in light of the new technologies continually being developed to find new energy sources and lessen future impacts to our waters.[2]

The Commonwealth Court's decision also will dissuade any energy production company from legitimately challenging the Department relative to any issue or order for fear of retaliation. For example, any energy production company would be deterred from challenging a Department's order or adverse action, even upon good grounds, for the fear that the Department would remember such challenge and rely

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[2] Should an energy production company be denied a future permit for energy production based on the fact that it has impacted some water in the past?

on this challenge in denying a future permit application that could potentially, as was the case here, shut down the business operations of the energy production company.

Further, as new types of energy production and techniques are being developed, catastrophic impacts to our economy and future energy reliance could result if future energy development is delayed or halted because of the government agency's retaliation and disparate treatment of such entities.

5. The Commonwealth Court's erroneous affirmation of the Department's Order opens the door for government agencies to selectively and illegally violate important real property rights in the issuance of permits for land use and energy exploration.

If the Commonwealth Court's decision is not reversed, this decision could have serious ramifications throughout the country, especially as the demand for domestic mineral resources and energy has increased sharply.

Under the Commonwealth Court's decision, government agencies would have the unchecked and unregulated right to depart from standards set forth by the legislature in issuance of permits for land use and energy exploration and production. A government agency's own subjective and biased review of a permit based on disparate treatment of unreasonable classifications of permit applicants and on conclusive

assumptions of past actions is simply impermissible under the equal protection law of this country.

CONCLUSION

For the foregoing reasons, a writ of certiorari should be issued to review the judgment and opinion of the Pennsylvania Commonwealth Court, which violates the equal protection clause of the Fourteenth Amendment to the United States Constitution.

Respectfully submitted,

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